

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LATOYA LYNNISE WASSON,

Defendant-Appellant.

UNPUBLISHED

July 30, 2002

No. 231213

Kalamazoo Circuit Court

LC No. C00-0058 FC

Before: Murray, P.J., and Murphy and Kelly, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529 and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant argues that the trial court's findings were clearly erroneous because the trial court, sitting as the sole trier of fact, made comparisons among the various witnesses during the course of the trial to resolve the central issue of identification. Defendant maintains that the trial court's assessment of the witnesses constituted an "improper subjective investigation" which resulted in a decision rendered upon facts not placed into evidence and further deprived defendant of the right of confrontation guaranteed by the Sixth Amendment. Const 1963, art 1, § 20; US Const Am, VI. We do not agree.

This Court will decline to disturb a trial court's findings of fact in a criminal bench trial unless clearly erroneous. *People v Graham*, 125 Mich App 168, 172; 335 NW2d 658 (1983). If this Court is left with a definite and firm conviction that a mistake was made, then a particular finding is considered clearly erroneous. *People v Kevin Williams*, 244 Mich App 533, 537; 624 NW2d 575 (2001).

It is axiomatic that a trial judge, when sitting as the finder of fact, must weigh the evidence and assess the credibility of the testifying witnesses. *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). In the instant case, a review of the record reveals that after considering all of the applicable jury instructions, the trial court thereafter not only methodically considered all of the evidence and testimony presented, it further explicated the underlying rationale resulting in its ultimate decision. With regard to the pivotal identification issue, the trial court did nothing more than what every single jury does during its deliberations; it

subjectively considered the evidence and testimony presented within the objective framework provided by the relevant jury instructions. Simply put, there is nothing in the current record suggesting that the trial court did anything improper or otherwise impugned defendant's constitutional right of confrontation. Indeed, to accept defendant's position would necessarily entail subjecting the trier of fact's perceptions to cross-examination; a clearly unacceptable result.

A review of the record in the case sub judice reveals that the trial court weighed the testimony and evaluated the credibility of the witnesses. As the final arbiter of fact, the trial court found defendant guilty. Because this Court defers to the trial court's unique opportunity to judge the credibility of the witnesses that appear before it, MCR 2.613(C), on the record here before us, we do not find the requisite clear error to invade the trial court's province and disturb the trial court's ultimate determination.

Affirmed.

/s/ Christopher M. Murray

/s/ William B. Murray

/s/ Kirsten Frank Kelly